

AMENDED IN ASSEMBLY JUNE 3, 2003

AMENDED IN ASSEMBLY JUNE 2, 2003

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 897

Introduced by Assembly Member Jackson

February 20, 2003

An act to amend Sections 13264, 13268, 13321, ~~13330~~, 13350, 13372, 13383, 13385, and 13387 of, ~~and to add Sections 13246.3 and 13246.5 to~~, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 897, as amended, Jackson. Water quality.

(1) ~~Existing law requires the State Water Resources Control Board and the California regional water quality control boards to adopt total maximum daily loads for certain pollutants for certain impaired water bodies.~~

~~This bill would require that adoption of a total maximum daily load by the state board or a regional board include a program of implementation or revisions to an existing program of implementation.~~

(2) ~~Existing law prohibits any person from initiating a discharge or making a material change in a discharge of waste after filing a waste discharge report and prior to the issuance of waste discharge requirements or, under certain circumstances, the expiration of 120 days after compliance with certain requirements relating to the filing of that report, whichever is earlier. Under the act, any person discharging hazardous waste in violation of these provisions is guilty of a~~

misdemeanor and may be liable civilly in an amount that does not exceed \$5,000 for each day in which the violation occurs.

This bill would make the requirement relating to the expiration of 120 days applicable only to the discharge of waste that does not create, or threaten to create, a condition of pollution or nuisance. Because, under certain circumstances, a violation of this requirement would be a crime, the bill would impose a state-mandated local program by creating a new crime. The bill would require any ~~fin~~*es* ~~money~~*s* collected from the imposition of penalties for a violation of this requirement to be deposited in the Waste Discharge Permit Fund, for expenditure by the state board, upon appropriation by the Legislature, to ~~carry out the Porter-Cologne Water Quality Control Act~~ *assist the regional boards, and certain other public agencies, in responding to significant water pollution problems.*

(3)

(2) Existing law declares that a person failing or refusing to furnish certain technical or monitoring reports or a statement of compliance, or falsifying information set forth in those reports or that statement, is guilty of a misdemeanor and may be civilly liable in accordance with certain provisions of law.

This bill, in addition, would require a person who knowingly commits these violations to be punished by a fine that does not exceed \$25,000, and after a prior conviction, to be punished by a fine that does not exceed \$25,000 for each day of the violation. The bill would require the funds collected from the imposition of these fines to be deposited in the Waste Discharge Permit Fund for expenditure by the state board, upon appropriation by the Legislature, to ~~carry out the act. By~~ *subjecting a person who knowingly commits these violations to imprisonment in state prison, the bill would impose a state-mandated local program* *assist the regional boards, and certain other public agencies, in responding to significant water pollution problems.*

(4)

(3) Existing law authorizes the state board, upon notice and a hearing, to stay the effect of the decision and order of a regional board or the state board.

This bill would delete the requirement that a hearing be held for the purposes of granting a stay.

(5)

(4) Existing law, the Porter-Cologne Water Quality Control Act, with certain exceptions, subjects a person to civil liability if that person

intentionally or negligently violates a cease and desist order or cleanup and abatement order, or who, in violation of certain waste discharge requirements, a water quality certification, or an administrative order, intentionally or negligently discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, and creates a condition of pollution or nuisance.

This bill, subject to those exceptions, would extend that civil liability to a person who violates a cease and desist order or cleanup and abatement order, or who, in violation of certain waste discharge requirements, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state.

~~(6)~~

(5) The act, with certain exceptions, subjects a person to civil liability if that person causes or permits any hazardous substance to be discharged in any of the waters of the state where it creates a condition of pollution or nuisance.

This bill, subject to those exceptions, would extend that civil liability to a person who causes or permits any hazardous substance to be discharged in any of the waters of the state.

~~(7)~~

(6) The bill would require funds generated by the imposition of the ~~penalties liabilities~~ described in ~~(5)~~ (4) and ~~(6)~~ (5) to be deposited in the Waste Discharge Permit Fund for expenditure by the state board, upon appropriation by the Legislature, to ~~carry out the act~~ *assist the regional boards, and certain other public agencies, in responding to significant water pollution problems.*

~~(8)~~

(7) Existing law requires the state board to submit an annual report to the Legislature regarding the imposition of civil liability that has been administratively imposed by the regional boards during the preceding year.

This bill would delete that provision.

~~(9)~~

(8) Existing law subjects a person who violates waste discharge requirements or a dredged or fill material permit to civil and criminal penalties.

This bill, in addition, would make those civil and criminal penalties applicable to a person who violates a water quality certification issued pursuant to the federal Clean Water Act. The bill would require the funds collected from the imposition of these penalties to be deposited

in the Waste Discharge Permit Fund, for expenditure by the state board, upon appropriation by the Legislature, to ~~carry out the act~~ *assist the regional boards, and certain other public agencies, in responding to significant water pollution problems.* Because the bill would create a new crime, the bill would impose a state-mandated local program.

(10)

(9) Existing law declares that certain provisions that govern the implementation of the federal Clean Water Act by the state and that relate to the discharge of dredged or fill material apply only to discharges for which the state has an approved permit program.

This bill, instead, would declare that those provisions relating to the filing of a report for the discharge of dredged or fill material and the issuance of dredged or fill material permits by the state board or a regional board apply only to discharges for which the state has an approved permit program.

~~The bill would require a person to commence any action or proceeding against the state board or a regional board to attack, review, or set aside a state policy for water quality control, a water quality control plan, a regulation implementing the Porter-Cologne Water Quality Control Act, or any action amending or rescinding that plan, policy, or regulation not later than 90 days after the date of the last agency whose approval is necessary for that plan, policy, regulation, amendment, or rescission to take effect.~~

(11)

(10) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 13246.3 is added to the Water Code, to~~
 2 ~~read:~~
 3 ~~13246.3. Adoption of a total maximum daily load by the state~~
 4 ~~board or a regional board shall include a program of~~
 5 ~~implementation or revisions to an existing program of~~

1 ~~implementation. Any revisions shall be made no later than 180~~
2 ~~days after the adoption of the total maximum daily load.~~

3 ~~SEC. 2. Section 13246.5 is added to the Water Code, to read:~~

4 ~~13246.5. (a) An action or proceeding against the state board~~
5 ~~or a regional board to attack, review, set aside, or annul a state~~
6 ~~policy for water quality control, a water quality control plan, a~~
7 ~~regulation implementing this division, or any action amending or~~
8 ~~rescinding that plan, policy or regulation, shall be commenced not~~
9 ~~later than 90 days after the date of approval by the last agency~~
10 ~~whose approval is necessary for that plan, policy, regulation,~~
11 ~~amendment, or rescission to take effect.~~

12 ~~(b) This section does not limit the ability of any person to~~
13 ~~challenge any policy, plan, or regulation, as applied to that person~~
14 ~~in an action or proceeding under Section 13320 or 13330 for~~
15 ~~review of a waste discharge requirement or other order that applies~~
16 ~~to that policy, plan, or regulation.~~

17 ~~(c) This section does not create a new right to judicial review,~~
18 ~~but governs proceedings if that review is authorized pursuant to~~
19 ~~another provision of law.~~

20 ~~(d) This section does not apply to the issuance, denial,~~
21 ~~amendment, or revocation of any water quality certification, waste~~
22 ~~discharge requirements, or permit pursuant to Section 13160,~~
23 ~~13263, or 13377, or to the issuance, denial, amendment, or~~
24 ~~revocation of any waiver pursuant to Section 13269, unless the~~
25 ~~state board or a regional board takes that action by regulation~~
26 ~~adopted pursuant to Chapter 3.5 (commencing with Section~~
27 ~~11340) of Part 1 of Division 3 of Title 2 of the Government Code.~~

28 ~~SEC. 3.—~~

29 ~~SECTION 1. Section 13264 of the Water Code is amended to~~
30 ~~read:~~

31 ~~13264. (a) No person shall initiate any new discharge of~~
32 ~~waste or make any material changes in any discharge, or initiate~~
33 ~~a discharge to, make any material changes in a discharge to, or~~
34 ~~construct, an injection well, prior to the filing of the report required~~
35 ~~by Section 13260 and no person shall take any of these actions after~~
36 ~~filing the report but before whichever of the following occurs first:~~

37 ~~(1) The issuance of waste discharge requirements pursuant to~~
38 ~~Section 13263.~~

39 ~~(2) The expiration of 120 days after compliance with Section~~
40 ~~13260 if the waste to be discharged does not create or threaten to~~

1 create a condition of pollution or nuisance and any of the following
2 applies:

3 (A) The project is not subject to the California Environmental
4 Quality Act (Division 13 (commencing with Section 21000) of the
5 Public Resources Code).

6 (B) The regional board is the lead agency for purposes of the
7 California Environmental Quality Act, a negative declaration is
8 required, and at least 105 days have expired since the regional
9 board assumed lead agency responsibility.

10 (C) The regional board is the lead agency for the purposes of
11 the California Environmental Quality Act, and environmental
12 impact report or written documentation prepared to meet the
13 requirements of Section 21080.5 of the Public Resources Code is
14 required, and at least one year has expired since the regional board
15 assumed lead agency responsibility.

16 (D) The regional board is a responsible agency for purposes of
17 the California Environmental Quality Act, and at least 90 days
18 have expired since certification or approval of environmental
19 documentation by the lead agency.

20 (3) The issuance of a waiver pursuant to Section 13269.

21 (b) The Attorney General, at the request of a regional board,
22 shall petition the superior court for the issuance of a temporary
23 restraining order, preliminary injunction, or permanent injunction,
24 or combination thereof, as may be appropriate, prohibiting any
25 person who is violating or threatening to violate this section from
26 doing any of the following, whichever is applicable:

27 (1) Discharging the waste or fluid.

28 (2) Making any material change in the discharge.

29 (3) Constructing the injection well.

30 (c) (1) Notwithstanding any other provision of law, ~~fin~~
31 ~~money~~s collected under this division for a violation pursuant to
32 paragraph (2) of subdivision (a) shall be deposited in the Waste
33 Discharge Permit Fund and separately accounted for in that fund.

34 (2) The funds described in paragraph (1) shall be expended by
35 the state board, upon appropriation by the Legislature, to ~~carry out~~
36 ~~this division~~.

37 ~~SEC. 4.—assist regional boards, and other public agencies~~
38 ~~with authority to clean up waste or abate the effects of the waste,~~
39 ~~in responding to significant water pollution problems.~~

40 SEC. 2. Section 13268 of the Water Code is amended to read:

1 13268. (a) *(1)* Any person failing or refusing to furnish
2 technical or monitoring program reports as required by
3 subdivision (b) of Section 13267, or failing or refusing to furnish
4 a statement of compliance as required by subdivision (b) of
5 Section 13399.2, or falsifying any information provided therein,
6 is guilty of a misdemeanor, *and* may be liable civilly in accordance
7 with subdivision (b), ~~and is subject to criminal penalties pursuant~~
8 ~~to subdivision (e).~~ *(b).*

9 *(2) Any person who knowingly commits any violation described*
10 *in paragraph (1) is subject to criminal penalties pursuant to*
11 *subdivision (e).*

12 (b) (1) Civil liability may be administratively imposed by a
13 regional board in accordance with Article 2.5 (commencing with
14 Section 13323) of Chapter 5 for a violation of subdivision (a) in
15 an amount which shall not exceed one thousand dollars (\$1,000)
16 for each day in which the violation occurs.

17 (2) Civil liability may be imposed by the superior court in
18 accordance with Article 5 (commencing with Section 13350) and
19 Article 6 (commencing with Section 13360) of Chapter 5 for a
20 violation of subdivision (a) in an amount which shall not exceed
21 five thousand dollars (\$5,000) for each day in which the violation
22 occurs.

23 (c) Any person discharging hazardous waste, as defined in
24 Section 25117 of the Health and Safety Code, ~~knowingly failing~~
25 ~~or refusing who knowingly fails or refuses~~ to furnish technical or
26 monitoring program reports as required by subdivision (b) of
27 Section 13267, or ~~knowingly falsifying any information provided~~
28 ~~therein, is guilty of a~~ *who knowingly falsifies any information*
29 *provided in those technical or monitoring program reports, is*
30 *guilty of a* misdemeanor, may be civilly liable in accordance with
31 subdivision (d), and is subject to criminal penalties pursuant to
32 subdivision (e).

33 (d) (1) Civil liability may be administratively imposed by a
34 regional board in accordance with Article 2.5 (commencing with
35 Section 13323) of Chapter 5 for a violation of subdivision (c) in
36 an amount which shall not exceed five thousand dollars (\$5,000)
37 for each day in which the violation occurs.

38 (2) Civil liability may be imposed by the superior court in
39 accordance with Article 5 (commencing with Section 13350) and
40 Article 6 (commencing with Section 13360) of Chapter 5 for a

1 violation of subdivision (c) in an amount which shall not exceed
2 twenty-five thousand dollars (\$25,000) for each day in which the
3 violation occurs.

4 (e) (1) Subject to paragraph (2), any person who knowingly
5 commits any of the violations set forth in subdivision (a) or (c)
6 shall be punished by a fine that does not exceed twenty-five
7 thousand dollars (\$25,000).

8 (2) Any person who knowingly commits any of the violations
9 set forth in subdivision (a) or (c) after a prior conviction for a
10 violation set forth in subdivision (a) or (c) shall be punished by a
11 fine that does not exceed twenty-five thousand dollars (\$25,000)
12 for each day of the violation.

13 (f) (1) Notwithstanding any other provision of law, fines
14 collected pursuant to subdivision (e) shall be deposited in the
15 Waste Discharge Permit Fund and separately accounted for in that
16 fund.

17 (2) The funds described in paragraph (1) shall be expended by
18 the state board, upon appropriation by the Legislature, to ~~carry out~~
19 ~~this division.~~

20 ~~SEC. 5.—assist regional boards, and other public agencies~~
21 ~~with authority to clean up waste, or abate the effects of the waste,~~
22 ~~in responding to significant water pollution problems.~~

23 SEC. 3. Section 13321 of the Water Code is amended to read:

24 13321. (a) In the case of a review by the state board under
25 Section 13320, the state board, upon notice may stay in whole or
26 in part the effect of the decision and order of a regional board or
27 of the state board.

28 (b) If a petition is filed with the superior court to review a
29 decision of the state board, any stay in effect at the time of the filing
30 the petition shall remain in effect by operation of law for a period
31 of 20 days from the date of the filing of that petition.

32 (c) If the superior court grants a stay pursuant to a petition for
33 review of a decision of the state board denying a request for a stay
34 with respect to waste discharge requirements, the stay may be
35 made effective as of the effective date of the waste discharge
36 requirements.

37 ~~SEC. 6.—Section 13330 of the Water Code is amended to read:~~

38 ~~13330.—(a) Not later than 30 days from the date of service of~~
39 ~~a copy of a decision or order issued by the state board under this~~
40 ~~division, other than a decision or order issued pursuant to Article~~

~~7 (commencing with Section 13550) of Chapter 7, any aggrieved party may file with the superior court a petition for writ of mandate for review thereof.~~

~~(b) Any party aggrieved by a final decision or order of a regional board for which the state board denies review may obtain review of the decision or order of the regional board in the superior court by filing in the court a petition for writ of mandate not later than 30 days from the date on which the state board denies review.~~

~~(c) If no aggrieved party petitions for writ of mandate within the time provided by this section, a decision or order of the state board or a regional board shall not be subject to review by any court.~~

~~(d) Except as otherwise provided, Section 1094.5 of the Code of Civil Procedure governs proceedings for which petitions are filed pursuant to this section. For the purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall exercise its independent judgment on the evidence in any case involving the judicial review of a decision or order of the state board issued under Section 13320, or a decision or order of a regional board for which the state board denies review under Section 13320, other than a decision or order issued under Section 13323.~~

~~(e) Any party aggrieved by a decision or order issued by the state board under Article 7 (commencing with Section 13550) of Chapter 7 may petition for reconsideration or judicial review in accordance with Chapter 4 (commencing with Section 1120) of Part 1 of Division 2.~~

~~(f) Judicial review of a resolution of the state board or a regional board that adopts, approves, amends, or rescinds state policy for water quality control, a water quality control plan, or a regulation subject to Chapter 3.5 (commencing with Section 11340) of Part 1 Division 3 of Title 2 of the Government Code or amendments thereto, is subject to Section 13246.5.~~

~~SEC. 7.—~~

SEC. 4. Section 13350 of the Water Code is amended to read:

13350. (a) Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or

1 amended by a regional board or the state board, discharges waste,
2 or causes or permits waste to be deposited where it is discharged,
3 into the waters of the state, or (3) causes or permits any oil or any
4 residuary product of petroleum to be deposited in or on any of the
5 waters of the state, except in accordance with waste discharge
6 requirements or other provisions of this division, shall be liable
7 civilly in accordance with subdivision (d) or (e).

8 (b) (1) Any person who, without regard to intent or
9 negligence, causes or permits any hazardous substance to be
10 discharged in or on any of the waters of the state, except in
11 accordance with waste discharge requirements or other provisions
12 of this division, shall be strictly liable civilly in accordance with
13 subdivision (d) or (e).

14 (2) For purposes of this subdivision, the term “discharge”
15 includes only those discharges for which Section 13260 directs
16 that a report of waste discharge shall be filed with the regional
17 board.

18 (3) For purposes of this subdivision, the term “discharge” does
19 not include any emission excluded from the applicability of
20 Section 311 of the Clean Water Act (33 U.S.C. Sec. 1321) pursuant
21 to Environmental Protection Agency regulations interpreting
22 Section 311(a)(2) of the Clean Water Act (33 U.S.C. Sec.
23 1321(a)(2)).

24 (c) There shall be no liability under subdivision (b) if the
25 discharge is caused solely by any one or combination of the
26 following:

27 (1) An act of war.

28 (2) An unanticipated grave natural disaster or other natural
29 phenomenon of an exceptional, inevitable, and irresistible
30 character, the effects of which could not have been prevented or
31 avoided by the exercise of due care or foresight.

32 (3) Negligence on the part of the state, the United States, or any
33 department or agency thereof; provided, that this paragraph shall
34 not be interpreted to provide the state, the United States, or any
35 department or agency thereof a defense to liability for any
36 discharge caused by its own negligence.

37 (4) An intentional act of a third party, the effects of which could
38 not have been prevented or avoided by the exercise of due care or
39 foresight.



1 (5) Any other circumstance or event which causes the
2 discharge despite the exercise of every reasonable precaution to
3 prevent or mitigate the discharge.

4 (d) The court may impose civil liability either on a daily basis
5 or on a per gallon basis, but not both.

6 (1) The civil liability on a daily basis may not exceed fifteen
7 thousand dollars (\$15,000) for each day the violation occurs.

8 (2) The civil liability on a per gallon basis may not exceed
9 twenty dollars (\$20) for each gallon of waste discharged.

10 (e) The state board or a regional board may impose civil
11 liability administratively pursuant to Article 2.5 (commencing
12 with Section 13323) of Chapter 5 either on a daily basis or on a per
13 gallon basis, but not both.

14 (1) The civil liability on a daily basis may not exceed five
15 thousand dollars (\$5,000) for each day the violation occurs.

16 (A) When there is a discharge, and a cleanup and abatement
17 order is issued, except as provided in subdivision (f), the civil
18 liability shall not be less than five hundred dollars (\$500) for each
19 day in which the discharge occurs and for each day the cleanup and
20 abatement order is violated.

21 (B) When there is no discharge, but an order issued by the
22 regional board is violated, except as provided in subdivision (f),
23 the civil liability shall not be less than one hundred dollars (\$100)
24 for each day in which the violation occurs.

25 (2) The civil liability on a per gallon basis may not exceed ten
26 dollars (\$10) for each gallon of waste discharged.

27 (f) A regional board may not administratively impose civil
28 liability in accordance with paragraph (1) of subdivision (e) in an
29 amount less than the minimum amount specified, unless the
30 regional board makes express findings setting forth the reasons for
31 its action based upon the specific factors required to be considered
32 pursuant to Section 13327.

33 (g) The Attorney General, upon request of a regional board or
34 the state board, shall petition the superior court to impose, assess,
35 and recover such sums. Except in the case of a violation of a cease
36 and desist order, a regional board or the state board shall make such
37 request only after a hearing, with due notice of the hearing given
38 to all affected persons. In determining that amount, the court shall
39 be subject to Section 13351.

(h) Article 3 (commencing with Section 13330) and Article 6 (commencing with Section 13360) apply to proceedings to impose, assess, and recover an amount pursuant to this article.

(i) Any person who incurs any liability established under this section shall be entitled to contribution for that liability from any third party, in an action in the superior court and upon proof that the discharge was caused in whole or in part by an act or omission of the third party, to the extent that the discharge is caused by the act or omission of the third party, in accordance with the principles of comparative fault.

(j) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal, except that no liability shall be recoverable under subdivision (b) for any discharge for which liability is recovered under Section 13385.

(k) Notwithstanding any other provision of law, all funds generated by the imposition of ~~penalties~~ *liabilities* pursuant to this section shall be deposited into the Waste Discharge Permit Fund. These moneys shall be separately accounted for, and shall be expended by the state board, upon appropriation by the Legislature, to ~~carry out this division.~~

~~SEC. 8.—assist regional boards, and other public agencies with authority to clean up waste, or abate the effects of the waste, in responding to significant water pollution problems.~~

SEC. 5. Section 13372 of the Water Code is amended to read:

13372. (a) This chapter shall be construed to ensure consistency with the requirements for state programs implementing the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto. To the extent other provisions of this division are consistent with the provisions of this chapter and with the requirements for state programs implementing the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto, those provisions apply to actions and procedures provided for in this chapter. The provisions of this chapter shall prevail over other provisions of this division to the extent of any inconsistency. The provisions of this chapter apply only to actions required under the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto.

(b) The provisions of Section 13376 requiring the filing of a report for the discharge of dredged or fill material and the provisions of this chapter relating to the issuance of dredged or fill material permits by the state board or a regional board shall be applicable only to discharges for which the state has an approved permit program, in accordance with the provisions of the Federal Water Pollution Control Act, as amended, for the discharge of dredged or fill material.

~~SEC. 9.—~~

SEC. 6. Section 13383 of the Water Code is amended to read:

13383. (a) The state board or a regional board may establish monitoring, inspection, entry, reporting, and recordkeeping requirements, as authorized by Section 13160, 13376, or 13377 or by subdivisions (b) and (c) of this section, for any person who discharges, or proposes to discharge, to navigable waters, any person who introduces pollutants into a publicly owned treatment works, any person who owns or operates, or proposes to own or operate, a publicly owned treatment works or other treatment works treating domestic sewage, or any person who uses or disposes, or proposes to use or dispose, of sewage sludge.

(b) The state board or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.

(c) The state board or a regional board may inspect the facilities of any person subject to this section pursuant to the procedure set forth in subdivision (c) of Section 13267.

~~SEC. 10.—~~

SEC. 7. Section 13385 of the Water Code is amended to read:

13385. (a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) Any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

(3) Any requirements established pursuant to Section 13383.

(4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the

1 activity subject to the order or prohibition is subject to regulation
2 under this chapter.

3 (5) Any requirements of Section 301, 302, 306, 307, 308, 318,
4 401, or 405 of the Clean Water Act, as amended.

5 (6) Any requirement imposed in a pretreatment program
6 approved pursuant to waste discharge requirements issued under
7 Section 13377 or approved pursuant to a permit issued by the
8 administrator.

9 (b) Civil liability may be imposed by the superior court in an
10 amount not to exceed the sum of both of the following:

11 (1) Twenty-five thousand dollars (\$25,000) for each day in
12 which the violation occurs.

13 (2) Where there is a discharge, any portion of which is not
14 susceptible to cleanup or is not cleaned up, and the volume
15 discharged but not cleaned up exceeds 1,000 gallons, an additional
16 liability not to exceed twenty-five dollars (\$25) multiplied by the
17 number of gallons by which the volume discharged but not cleaned
18 up exceeds 1,000 gallons.

19 The Attorney General, upon request of a regional board or the
20 state board, shall petition the superior court to impose the liability.

21 (c) Civil liability may be imposed administratively by the state
22 board or a regional board pursuant to Article 2.5 (commencing
23 with Section 13323) of Chapter 5 in an amount not to exceed the
24 sum of both of the following:

25 (1) Ten thousand dollars (\$10,000) for each day in which the
26 violation occurs.

27 (2) Where there is a discharge, any portion of which is not
28 susceptible to cleanup or is not cleaned up, and the volume
29 discharged but not cleaned up exceeds 1,000 gallons, an additional
30 liability not to exceed ten dollars (\$10) multiplied by the number
31 of gallons by which the volume discharged but not cleaned up
32 exceeds 1,000 gallons.

33 (d) For purposes of subdivisions (b) and (c), the term
34 “discharge” includes any discharge to navigable waters of the
35 United States, any introduction of pollutants into a publicly owned
36 treatment works, or any use or disposal of sewage sludge.

37 (e) In determining the amount of any liability imposed under
38 this section, the regional board, the state board, or the superior
39 court, as the case may be, shall take into account the nature,
40 circumstances, extent, and gravity of the violation or violations,

whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

(f) (1) Except as provided in paragraph (2), for the purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(2) (A) For the purposes of subdivisions (h) and (i), a single operational upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational upset results in violations of more than one effluent limitation and the violations continue for a period of more than one day, if all of the following apply:

(i) The discharger demonstrates all of the following:

(I) The upset was not caused by wastewater treatment operator error and was not due to discharger negligence.

(II) But for the operational upset of the biological treatment process, the violations would not have occurred nor would they have continued for more than one day.

(III) The discharger carried out all reasonable and immediately feasible actions to reduce noncompliance with the applicable effluent limitations.

(ii) The discharger is implementing an approved pretreatment program, if so required by federal or state law.

(B) Subparagraph (A) only applies to violations that occur during a period for which the regional board has determined that violations are unavoidable, but in no case may that period exceed 30 days.

(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal, except that no liability shall be recoverable under Section 13261, 13265, 13268, or 13350 for violations for which liability is recovered under this section.

(h) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

(2) For the purposes of this section, a “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

(i) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

(A) Violates a waste discharge requirement effluent limitation.

(B) Fails to file a report pursuant to Section 13260.

(C) Files an incomplete report pursuant to Section 13260.

(D) Violates a toxicity discharge limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

(2) For the purposes of this section, a “period of six consecutive months” means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.

(j) Subdivisions (h) and (i) do not apply to any of the following:

(1) A violation caused by one or any combination of the following:

(A) An act of war.

(B) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

1 (C) An intentional act of a third party, the effects of which
2 could not have been prevented or avoided by the exercise of due
3 care or foresight.

4 (D) (i) The operation of a new or reconstructed wastewater
5 treatment unit during a defined period of adjusting or testing, not
6 to exceed 90 days for a wastewater treatment unit that relies on a
7 biological treatment process and not to exceed 30 days for any
8 other wastewater treatment unit, if all of the following
9 requirements are met:

10 (I) The discharger has submitted to the regional board, at least
11 30 days in advance of the operation, an operations plan that
12 describes the actions the discharger will take during the period of
13 adjusting and testing, including steps to prevent violations and
14 identifies the shortest reasonable time required for the period of
15 adjusting and testing, not to exceed 90 days for a wastewater
16 treatment unit that relies on a biological treatment process and not
17 to exceed 30 days for any other wastewater treatment unit.

18 (II) The regional board has not objected in writing to the
19 operations plan.

20 (III) The discharger demonstrates that the violations resulted
21 from the operation of the new or reconstructed wastewater
22 treatment unit and that the violations could not have reasonably
23 been avoided.

24 (IV) The discharger demonstrates compliance with the
25 operations plan.

26 (V) In the case of a reconstructed wastewater treatment unit,
27 the unit relies on a biological treatment process that is required to
28 be out of operation for at least 14 days in order to perform the
29 reconstruction, or the unit is required to be out of operation for at
30 least 14 days and, at the time of the reconstruction, the cost of
31 reconstructing the unit exceeds 50 percent of the cost of replacing
32 the wastewater treatment unit.

33 (ii) For the purposes of this section, “wastewater treatment
34 unit” means a component of a wastewater treatment plant that
35 performs a designated treatment function.

36 (2) (A) Except as provided in subparagraph (B), a violation of
37 an effluent limitation where the waste discharge is in compliance
38 with either a cease and desist order issued pursuant to Section
39 13301 or a time schedule order issued pursuant to Section 13300,
40 if all of the following requirements are met:

1 (i) The cease and desist order or time schedule order is issued
2 after January 1, 1995, but not later than July 1, 2000, specifies the
3 actions that the discharger is required to take in order to correct the
4 violations that would otherwise be subject to subdivisions (h) and
5 (i), and the date by which compliance is required to be achieved
6 and, if the final date by which compliance is required to be
7 achieved is later than one year from the effective date of the cease
8 and desist order or time schedule order, specifies the interim
9 requirements by which progress towards compliance will be
10 measured and the date by which the discharger will be in
11 compliance with each interim requirement.

12 (ii) The discharger has prepared and is implementing in a
13 timely and proper manner, or is required by the regional board to
14 prepare and implement, a pollution prevention plan that meets the
15 requirements of Section 13263.3.

16 (iii) The discharger demonstrates that it has carried out all
17 reasonable and immediately feasible actions to reduce
18 noncompliance with the waste discharge requirements applicable
19 to the waste discharge and the executive officer of the regional
20 board concurs with the demonstration.

21 (B) Subdivisions (h) and (i) shall become applicable to a waste
22 discharge on the date the waste discharge requirements applicable
23 to the waste discharge are revised and reissued pursuant to Section
24 13380, unless the regional board does all of the following on or
25 before that date:

26 (i) Modifies the requirements of the cease and desist order or
27 time schedule order as may be necessary to make it fully consistent
28 with the reissued waste discharge requirements.

29 (ii) Establishes in the modified cease and desist order or time
30 schedule order a date by which full compliance with the reissued
31 waste discharge requirements shall be achieved. For the purposes
32 of this subdivision, the regional board may not establish this date
33 later than five years from the date the waste discharge
34 requirements were required to be reviewed pursuant to Section
35 13380. If the reissued waste discharge requirements do not add
36 new effluent limitations or do not include effluent limitations that
37 are more stringent than those in the original waste discharge
38 requirements, the date shall be the same as the final date for
39 compliance in the original cease and desist order or time schedule
40 order or five years from the date that the waste discharge

1 requirements were required to be reviewed pursuant to Section
2 13380, whichever is earlier.

3 (iii) Determines that the pollution prevention plan required by
4 clause (ii) of subparagraph (A) is in compliance with the
5 requirements of Section 13263.3 and that the discharger is
6 implementing the pollution prevention plan in a timely and proper
7 manner.

8 (3) A violation of an effluent limitation where the waste
9 discharge is in compliance with either a cease and desist order
10 issued pursuant to Section 13301 or a time schedule order issued
11 pursuant to Section 13300 or Section 13308, if all of the following
12 requirements are met:

13 (A) The cease and desist order or time schedule order is issued
14 on or after July 1, 2000, and specifies the actions that the
15 discharger is required to take in order to correct the violations that
16 would otherwise be subject to subdivisions (h) and (i).

17 (B) The regional board finds that, for one of the following
18 reasons, the discharger is not able to consistently comply with one
19 or more of the effluent limitations established in the waste
20 discharge requirements applicable to the waste discharge:

21 (i) The effluent limitation is a new, more stringent, or modified
22 regulatory requirement that has become applicable to the waste
23 discharge after the effective date of the waste discharge
24 requirements and after July 1, 2000, new or modified control
25 measures are necessary in order to comply with the effluent
26 limitation, and the new or modified control measures cannot be
27 designed, installed, and put into operation within 30 calendar days.

28 (ii) New methods for detecting or measuring a pollutant in the
29 waste discharge demonstrate that new or modified control
30 measures are necessary in order to comply with the effluent
31 limitation and the new or modified control measures cannot be
32 designed, installed, and put into operation within 30 calendar days.

33 (iii) Unanticipated changes in the quality of the municipal or
34 industrial water supply available to the discharger are the cause of
35 unavoidable changes in the composition of the waste discharge,
36 the changes in the composition of the waste discharge are the cause
37 of the inability to comply with the effluent limitation, no
38 alternative water supply is reasonably available to the discharger,
39 and new or modified measures to control the composition of the

1 waste discharge cannot be designed, installed, and put into
2 operation within 30 calendar days.

3 (iv) The discharger is a publicly owned treatment works
4 located in Orange County that is unable to meet effluent
5 limitations for biological oxygen demand, suspended solids, or
6 both, because the publicly owned treatment works meets all of the
7 following criteria:

8 (I) Was previously operating under modified secondary
9 treatment requirements pursuant to Section 301(h) of the Clean
10 Water Act (33 U.S.C. Sec. 1311(h)).

11 (II) Did vote on July 17, 2002, not to apply for a renewal of the
12 modified secondary treatment requirements.

13 (III) Is in the process of upgrading its treatment facilities to
14 meet the secondary treatment standards required by Section
15 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec.
16 1311(b)(1)(B)).

17 (C) The regional board establishes a time schedule for bringing
18 the waste discharge into compliance with the effluent limitation
19 that is as short as possible, taking into account the technological,
20 operational, and economic factors that affect the design,
21 development, and implementation of the control measures that are
22 necessary to comply with the effluent limitation. For the purposes
23 of this subdivision, the time schedule may not exceed five years in
24 length, except that the time schedule may not exceed 10 years in
25 length for the upgrade described in subparagraph (B)(iv)(III). If
26 the time schedule exceeds one year from the effective date of the
27 order, the schedule shall include interim requirements and the
28 dates for their achievement. The interim requirements shall
29 include both of the following:

30 (i) Effluent limitations for the pollutant or pollutants of
31 concern.

32 (ii) Actions and milestones leading to compliance with the
33 effluent limitation.

34 (D) The discharger has prepared and is implementing in a
35 timely and proper manner, or is required by the regional board to
36 prepare and implement, a pollution prevention plan pursuant to
37 Section 13263.3.

38 (k) In lieu of assessing all or a portion of the mandatory
39 minimum penalties pursuant to subdivisions (h) and (i) against a
40 POTW serving a small community, as defined by subdivision (b)

1 of Section 79084, the state board or the regional board may elect
2 to require the POTW to spend an equivalent amount towards the
3 completion of a compliance project proposed by the POTW, if the
4 state or regional board finds all of the following:

5 (1) The compliance project is designed to correct the violations
6 within five years.

7 (2) The compliance project is in accordance with the
8 enforcement policy of the state board.

9 (3) The POTW has demonstrated that it has sufficient funding
10 to complete the compliance project.

11 (l) (1) In lieu of assessing penalties pursuant to subdivision (h)
12 or (i), the state board or regional board, with the concurrence of the
13 discharger, may direct a portion of the penalty amount to be
14 expended on a supplemental environmental project in accordance
15 with the enforcement policy of the state board. If the penalty
16 amount exceeds fifteen thousand dollars (\$15,000), the portion of
17 the penalty amount that may be directed to be expended on a
18 supplemental environmental project may not exceed fifteen
19 thousand dollars (\$15,000) plus 50 percent of the penalty amount
20 that exceeds fifteen thousand dollars (\$15,000).

21 (2) For the purposes of this section, a “supplemental
22 environmental project” means an environmentally beneficial
23 project that a person agrees to undertake, with the approval of the
24 regional board, that would not be undertaken in the absence of an
25 enforcement action under this section.

26 (3) This subdivision applies to the imposition of penalties
27 pursuant to subdivision (h) or (i) on or after January 1, 2003,
28 without regard to the date on which the violation occurs.

29 (m) The Attorney General, upon request of a regional board or
30 the state board, shall petition the appropriate court to collect any
31 liability or penalty imposed pursuant to this section. Any person
32 who fails to pay on a timely basis any liability or penalty imposed
33 under this section shall be required to pay, in addition to that
34 liability or penalty, interest, attorneys’ fees, costs for collection
35 proceedings, and a quarterly nonpayment penalty for each quarter
36 during which the failure to pay persists. The nonpayment penalty
37 shall be in an amount equal to 20 percent of the aggregate amount
38 of the person’s penalty and nonpayment penalties that are unpaid
39 as of the beginning of the quarter.

(n) (1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) (A) Notwithstanding any other provision of law, ~~fin~~^{es} moneys collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (5) of subdivision (a) shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to ~~carry out this division~~ *assist regional boards, and other public agencies with authority to clean up water or abate the effects of the waste, in responding to significant water pollution problems.*

(o) (1) The state board shall report annually to the Legislature regarding its enforcement activities. The reports shall include all of the following:

(A) A compilation of the number of violations of waste discharge requirements in the previous year.

(B) A record of the formal and informal compliance and enforcement actions taken for each violation.

(C) An analysis of the effectiveness of current enforcement policies, including mandatory minimum penalties.

(D) Recommendations, if any, necessary for improvements to the enforcement program in the following year.

(2) The report shall be submitted to the Chairperson of the Assembly Committee on Environmental Safety and Toxic Materials and the Chairperson of the Senate Committee on Environmental Quality on or before March 1, 2001, and annually thereafter.

(p) The amendments made to subdivisions (f), (h), (i) and (j) during the second year of the 2001–02 Regular Session apply only to violations that occur on or after January 1, 2003.

~~SEC. 11.~~

SEC. 8. Section 13387 of the Water Code is amended to read:

13387. (a) Any person who knowingly or negligently does any of the following is subject to criminal penalties as provided in subdivisions (b), (c), and (d):

(1) Violates Section 13375 or 13376.

1 (2) Violates any waste discharge requirements or dredged or
2 fill material permit issued pursuant to this chapter or any water
3 quality certification issued pursuant to Section 13160.

4 (3) Violates any order or prohibition issued pursuant to Section
5 13243 or 13301, if the activity subject to the order or prohibition
6 is subject to regulation under this chapter.

7 (4) Violates any requirement of Section 301, 302, 306, 307,
8 308, 318, 401, or 405 of the Clean Water Act, as amended.

9 (5) Introduces into a sewer system or into a publicly owned
10 treatment works any pollutant or hazardous substances which the
11 person knew or reasonably should have known could cause
12 personal injury or property damage.

13 (6) Introduces any pollutant or hazardous substance into a
14 sewer system or into a publicly owned treatment works, except in
15 accordance with any applicable pretreatment requirements, which
16 pollutant or hazardous substance causes the treatment works to
17 violate waste discharge requirements.

18 (b) Any person who negligently commits any of the violations
19 set forth in subdivision (a) shall, upon conviction, be punished by
20 a fine of not less than five thousand dollars (\$5,000), nor more than
21 twenty-five thousand dollars (\$25,000), for each day in which the
22 violation occurs, or by imprisonment for not more than one year
23 in the county jail, or both. If a conviction of a person is for a
24 violation committed after a first conviction of the person under this
25 subdivision, subdivision (c), or subdivision (d), punishment shall
26 be by a fine of not more than fifty thousand dollars (\$50,000) for
27 each day in which the violation occurs, or by imprisonment of not
28 more than two years, or by both.

29 (c) Any person who knowingly commits any of the violations
30 set forth in subdivision (a) shall, upon conviction, be punished by
31 a fine of not less than five thousand dollars (\$5,000), nor more than
32 fifty thousand dollars (\$50,000), for each day in which the
33 violation occurs, or by imprisonment in the state prison for not
34 more than three years, or by both. If a conviction of a person is for
35 a violation committed after a first conviction of the person under
36 this subdivision or subdivision (d), punishment shall be by a fine
37 of not more than one hundred thousand dollars (\$100,000) for each
38 day in which the violation occurs, or by imprisonment in the state
39 prison of not more than six years, or by both.

1 (d) (1) Any person who knowingly commits any of the
2 violations set forth in subdivision (a), and who knows at the time
3 that the person thereby places another person in imminent danger
4 of death or serious bodily injury, shall, upon conviction, be subject
5 to a fine of not more than two hundred fifty thousand dollars
6 (\$250,000) or imprisonment in the state prison of not more than
7 15 years, or both. A person which is an organization shall, upon
8 conviction under this subdivision, be subject to a fine of not more
9 than one million dollars (\$1,000,000). If a conviction of a person
10 is for a violation committed after a first conviction of the person
11 under this subdivision, the maximum punishment shall be a fine
12 of not more than five hundred thousand dollars (\$500,000) or
13 imprisonment in the state prison of not more than 30 years, or both.
14 A person which is an organization shall, upon conviction for a
15 violation committed after a first conviction of the person under this
16 subdivision, be subject to a fine of not more than two million
17 dollars (\$2,000,000). Any fines imposed pursuant to this
18 subdivision shall be in addition to any fines imposed pursuant to
19 subdivision (c).

20 (2) In determining whether a defendant who is an individual
21 knew that the defendant's conduct placed another person in
22 imminent danger of death or serious bodily injury, the defendant
23 is responsible only for actual awareness or actual belief that the
24 defendant possessed, and knowledge possessed by a person other
25 than the defendant, but not by the defendant personally, cannot be
26 attributed to the defendant.

27 (e) Any person who knowingly makes any false statement,
28 representation, or certification in any record, report, plan, notice
29 to comply, or other document filed with a regional board or the
30 state board, or who knowingly falsifies, tampers with, or renders
31 inaccurate any monitoring device or method required under this
32 division shall be punished by a fine of not more than twenty-five
33 thousand dollars (\$25,000), or by imprisonment in the state prison
34 for not more than two years, or by both. If a conviction of a person
35 is for a violation committed after a first conviction of the person
36 under this subdivision, punishment shall be by a fine of not more
37 than twenty-five thousand dollars (\$25,000) per day of violation,
38 or by imprisonment in the state prison of not more than four years,
39 or by both.



(f) For purposes of this section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(g) For purposes of this section, “organization,” “serious bodily injury,” “person,” and “hazardous substance” shall have the same meaning as in Section 309(c) of the Clean Water Act, as amended.

(h) (1) Subject to paragraph (2) funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) (A) Notwithstanding any other provision of law, fines collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (4) of subdivision (a) shall be deposited in the Water Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to ~~carry out this division.~~

~~SEC. 12.~~ *—assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in responding to significant water pollution problems.*

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.